

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Kaleo, Inc.)	
Joseph M. Sabath, President)	
Applicant (Outdoor Patio))	
for the premises located at)	
2048 West Armitage Avenue)	Case No. 08 LA 42
)	
v.)	
)	
Department of Business Affairs & Licensing)	
Local Liquor Control Commission)	
Mary Lou Eisenhauer, Acting Director)	

ORDER

CHAIRMAN FLEMING'S OPINION JOINED BY COMMISSIONER SCHNORF

Kaleo, Inc. applied for an outdoor patio license for the premises located at 2048 W. Armitage Avenue. On May 19, 2008, Mary Lou Eisenhauer in her position as the Acting Director of the Local Liquor Control Commission, sent the applicant a letter stating that the application was denied since the issuance of this license would have a deleterious impact on the health, safety and welfare of the surrounding community and would cause a law enforcement problem for the district police. The bases for these decisions was opposition from community residents because of a high level of a nuisance problem near the applicant's location. The area had been plagued with problems including loud late night disturbances and incidents which endanger the safety of the residents. This letter notified the applicant it had twenty days to submit a plan of operation that would provide reasonable assurance that the issuance of this license would not have a deleterious impact on the surrounding community.

On June 6, 2008, Kaleo, Inc. submitted a Plan of Operation. Some of the relevant provisions of this plan of operation were having a last seating on the patio at 8:30 p.m. and closing of the patio and the french doors on the front of the premises at 10:00 p.m.

On July 1, 2008, Ms. Eisenhower sent the applicant a letter disapproving the Plan of Operation in relevant part on the basis that its proposals did not reasonably alleviate concerns of excess noise from the neighborhood residents concerning an outdoor patio and only dealt with abatement of noise from the inside of the premises.

The applicant filed a timely notice of appeal at the License Appeal Commission on July 18, 2008. This matter proceeded to hearing on October 1, 2008 and November 20, 2008.

Joy Adelizzi is the Deputy Director with the Department of Business Affairs and Licensing and testified on behalf of the Local Liquor Control Commission. She testified that the Local Liquor Control Commission initially denied the application for an outdoor patio license on May 19, 2008, for deleterious impact based on objections from residents and community groups.

A Plan of Operation submitted by the applicant was reviewed and it was determined by the Local Liquor Control Commission that it did not adequately address the noise stemming from the outdoor patio. Ms. Adelizzi stated noise was the main concern in terms of deleterious impact. Ms. Adelizzi also testified a basis for the denial of the Plan of Operation was an objection from the President of the Armitage Park Homeowners Association that it did not agree to a 10:00 p.m. closing for the patio and such was not represented at a meeting with the

Bucktown Community Organization. The Armitage Park Homeowners Association also indicated its opposition was also based on the fact it was disappointed the applicant was seeking this license since they had proposed not to seek this license when the original incidental activity was issued.

On cross, Ms. Adelizzi acknowledged there is nothing in the file from the police department documenting complaints by neighbors with respect to noise or with respect to any issue. She was not at the meeting of the Bucktown Community Organization and had no personal knowledge if members of the Armitage Park Homeowners Association were present. She also admitted that between the buildings of the Armitage Park Homeowners Association and the proposed area for the outdoor patio is the building in which Cleo's Restaurant is located.

Carl Manthe testified that he has been the President of the Armitage Park Homeowners Association for three years. He and his wife Penelope Hopper live at 2052 W. Armitage. The Association consists of two buildings of six town homes. Each home is four stories and has a rooftop deck. He testified individually and in his official capacity of the Association. Six units, including his unit, are directly across an alley from Cleo's. They are to the west of Cleo's. To the immediate east of Cleo's is an empty space where the outdoor patio would be located and then further east is a three flat building. He can see Cleo's and the three flat building from his unit and he can see the empty garden area from his rooftop. The view of Cleo's from some of the units is obstructed but Cleo's can be heard everywhere. At the time of the hearing one of the units adjacent to Cleo's had a newborn and the room for that newborn is directly on the alley

looking at Cleo's. Cleo's opened about the time he moved into his home. There are no outdoor patios in the area.

The witness testified that since Cleo's opened there has been instances of people urinating in the alley, knocking over garbage cans and vomiting on the sidewalk. The other day he shoved a person who was smoking marijuana away from the alley and that person entered Cleo's. His opinion is that allowing a beer garden would decrease the value of his home. He would not have bought his unit if Cleo's had an outdoor patio.

Cleo's has a garage door in the front that opens directly into the sidewalk. There is another garage door on the side of Cleo's that opens out onto the proposed site of the patio area. These doors are open on warm days if it is not raining. He currently can hear noise from Cleo's if these garage doors are open and this happens on any warm day.

Mr. Manthe stated he is opposed to the issuance of this patio license. One reason for this opposition was that they had agreed to allow Cleo's to open with a liquor license if it was conditioned that they not have an outdoor patio license. Nine of the twelve unit owners have signed a petition in opposition to the patio license. He has never spoken to anyone from Cleo's about this patio application.

On cross-examination Mr. Manthe stated his conversations about not objecting to the original license with the condition that there be no outdoor patio were with the liquor board and

the Alderman at that time. There were no such conversations with representatives of Cleo's. The incident with the person smoking marijuana was a week before his testimony and the urinating and vomiting happened on numerous times. He has never called the police because he did not think it was worthwhile.

Mr. Manthe identified Applicant's Exhibit #2 as a document dated March 27, 2008, that he sent to the Liquor Control Commission in his capacity of President of the Armitage Park Homeowners Association. In that letter, Mr. Manthe wrote that there were several babies living in units adjacent to Cleo's. When questioned about how this letter seemed to contradict his testimony at the hearing, Mr. Manthe stated on March 27, 2008, there may have been only one child currently using the bedroom unit, but all units have a second bedroom that can be used as a baby's room. Mr. Manthe denied trying to mislead the Local Liquor Control Commission.

It should be noted that the denial of the Plan of Operation was based in part on a conversation with Mr. Manthe in which he stated the Association opposed the issuance of this license "due to the close proximity of bedroom windows on both sides of the applicant's business." Mr. Manthe also stated to the Department of Business Affairs and Licensing/Local Liquor Control Commission that "...many of these are children's bedrooms for infants and toddlers who go to sleep well before 10:00 p.m."

Debra Dodge lives one block north of Cleo's. There is an alley, a house, McLean Street and then her home. She cannot see Cleo's from her home but can hear noise from the backyard

of the home across the street when they have parties. Since Cleo's has opened there is a lot more traffic and a lot of poor people walking in the alley. She never had problems before Cleo's but last year her home was broken into. She is a member of the Bucktown Community Organization's Zoning Committee and was present when Cleo's made a presentation in the Spring of 2008. No vote was taken in the proposal. She opposes the issuance of this outdoor patio license.

Benjamin Leo lives at 2052 W. Armitage and is a member of the Armitage Park Homeowners Association. He opposes the issuance of a patio license to Cleo's because it will increase noise in the immediate area. He currently hears noise from Cleo's when it is warm outside because those big garage doors are open. There will be additional problems outside Cleo's from people loitering. Since Cleo's opened he has heard and seen guys knock all the garbage cans down on three occasions. He also witnessed what appeared to be a drug sale in that alley in June of 2008.

Penelope Hopper is the wife of Carl Manthe the President of the Armitage Park Homeowners Association. She was surprised to learn Cleo's has applied for an outdoor patio license because they had not opposed the liquor license if it did not pursue an outdoor liquor license. She feels an outdoor beer garden is not in character with the neighborhood. If and when they have a child, the baby's room will be facing Cleo's. They already hear noise from Cleo's when the doors are open. She and Carl would not have bought their unit if they knew Cleo's was to have an outdoor patio. They hear noise from Cleo's when inside their unit and when using the

rooftop deck.

A summary of the testimony in the applicant's case is also relevant to this decision.

Alderman Flores of the 1st Ward testified he has known Joseph Sabath as the licensee of a Cleo's located at 1935 W. Chicago Avenue for many years. He has had no problems with the operation of that Cleo's.

Joseph Sabath testified he is the President of Kaleo, Inc., which does business as Cleo's at 2048 W. Armitage. He has been in business at this location for two years and the premises has a Restaurant - Incidental Activity License. He also has operated a Cleo's at 1935 W. Chicago Avenue for several years with no violations. He is a member of East Village Association and the West Town Chamber of Commerce. He has sponsored West Fest and sport teams. His plan for the vacant lot is an intimate setting with twelve tables and seating for 40 to 48 people. The last seating on the patio would be at 8:30 p.m. and the doors would close at 10:00 p.m.

Laurie Sabath is the wife of Joseph Sabath. She has been a Certified Real Estate Appraiser for five years and has done about 3000 appraisals. She is familiar with the townhouses adjacent to Cleo's and has been in several units. She testified to the views or lack of views from different townhouses. She also noted noise emanating from the air conditioning units.

The first issue before this Commission is whether the issuance of this specific outdoor

patio license at this location will cause a deleterious impact on the health, safety and welfare of the surrounding community. Deleterious impact is defined as “an adverse effect on the value of property, an increased risk of violation of law or a risk of a substantial increase in noise, litter or vehicular congestion.” If a deleterious impact is proved by substantial evidence at this *de novo* hearing this Commission must then determine if the proposed Plan of Operation adequately addresses the deleterious impact issue.

Since the original denial letter alleges the issuance of this license would cause a law enforcement problem that issue will be addressed first. There was testimony that there has been an increase in crime in the area after the opening of Cleo's. There was also testimony of loitering in the alley, tipping of garbage cans and of a possible drug transaction. There was no testimony that the issuance of this outdoor patio license would cause a law enforcement problem for the district police. There was no evidence that the District Commander objected to this license. The City did not prove the issuance of this license would cause a law enforcement problem.

Ms. Adelizzi testified the noise element was the major concern of the Department of Business Affairs and Licensing/Local Liquor Control Commission. The testimony at this *de novo* hearing is that there is noise emanating from the open garage doors at Cleo's that can already be heard by the neighbors in the adjacent townhouse. This noise is heard on warm days when the doors are open. The doors can now be open until closing. While there will be noise now emanating from the area of where the outdoor patio would be located, that fact alone is insufficient to establish a risk of a substantial increase in noise. It should also be noted there was

no evidence of noise complaints against Cleo's.

A close review of the testimony in opposition to the license shows that a major, if not the major reason for opposing this license is the opinion that they were misled by Cleo's. They feel Cleo's promised to not open an outdoor patio in exchange for their support of the original incidental activity license. This is not a relevant factor to the issues of this case.

Since the City has failed to prove the issuance of this outdoor patio license this Commission need not address the Plan of Operation.

Based on the specific evidence presented in this case and this Commissioner's finding that the testimony of Carl Manthe was not credible the decision of the Department of Business Affairs and Licensing/Local Liquor Control Commission denying the issuance of an outdoor patio license to Kaleo, Inc. for the premises located at 2048 W. Armitage is reversed.

COMMISSIONER KOPPEL'S CONCURRING OPINION

Having reviewed the evidence in this case this Commissioner concurs with the Chairman's opinion. The license should be granted.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local
Liquor Control Commissioner of the City of Chicago be and the same hereby is REVERSED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the Petition for Rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: February 20, 2009

Dennis M. Fleming
Chairman

Irving J. Koppel
Member

Stephen B. Schnorf
Member

